

Office of Personnel
58 Headquarters

OLC 79-0204/10

PERS 11490

March 7, 1979

27-287/8

MEMORANDUM FOR: Director of Central Intelligence

FROM : Frederick P. Hitz
Legislative CounselSUBJECT : FY 1980 Intelligence Authorization
Bill

1. Action requested: Your signature on the attached letters forwarding the authorization bill package to the Speaker of the House and the President of the Senate.

2. Background: We are now ready to forward the authorization package to the Congress. The Office of Management and Budget is still considering our appeal on educational travel benefits and death gratuities. OMB has cleared the rest of the package, however, and further delay in getting the draft bill to our Committees would be inadvisable. Significant changes in the package from earlier versions you have seen include the following:

(a) Classified Annexes: The formulation on this point has been changed in an effort to avoid giving the entire classified annex the force of law. We are instead attempting to confine this to the classified Schedule of Authorizations, i.e., to the program summary figures as opposed to any detailed directives. The view of the Department of Justice is that Congress can, in limited instances such as authorization Acts, incorporate classified material into statute by reference. Given this view, we must adopt a damage-limiting strategy. We are not sanguine about the prospects for easily getting either the House Permanent Select Committee on Intelligence or the Senate Select Committee on Intelligence to go along with our formulation, but we do believe there is a reasonable chance of convincing the Committees that it is a constructive approach to this complex problem.

(b) Consultation with the Secretary of State Regarding the Carrying of Firearms Abroad: Language has been added to the material dealing with CIA firearms authority

indicating that you will continue to consult with the Secretary of State with regard to the carrying of firearms overseas. We agreed to include these statements in order to avoid a formal proposal from State to OMB that the firearms provision be changed to specify that CIA regulations on the carrying of firearms overseas must be approved by the Secretary.

(c) Technical Provisions: Both of these are the result of OMB suggestions. There has been considerable discussion as to whether we should resist inclusion of the provision on salary increases as being subject to construction as an encroachment upon your statutory authorities. It was decided, however, that there were also risks in omission of the language, or in focusing attention on it by trying to explain its unique relationship to our pay and benefit system. We have instead chosen to treat the provision as a purely technical matter, which has been added at the behest of OMB.

The other technical provision puts the intelligence authorization process in compliance with a provision of the Congressional Budget Act which requires the authorization of appropriations in the calendar year prior to the year in which the fiscal year begins.

(d) Drug Enforcement Administration: DEA has been dropped from the list of agencies in Section 101(a). DEA, OMB and the IC Staff agree that inclusion of DEA in the Intelligence Authorization Bill is improper while the issue of which, if any, of DEA's intelligence activities should be in the NFIP remains unresolved.

3. Staff position: All concerned components have been consulted extensively in the preparation of the authorization package and are in accord with the recommendation below.

4. Recommendation: That you sign the attached letters forwarding the draft Fiscal Year 1980 Intelligence and Intelligence-Related Activities Authorization Act to the Congress.



Frederick P. Hitz

STATINTL

Attachments

Approval: *Letter signed* *9 March 79*
Director of Central Intelligence date

Disapproval: _____
Director of Central Intelligence date

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Washington, D.C. 20505

79-48416

9 MAR 1979

OLC 79-0204/e

Honorable Walter F. Mondale
President of the United
States Senate
Washington, D.C. 20510

Dear Mr. President:

This letter transmits for the consideration of the Congress a draft "Intelligence and Intelligence-Related Activities Authorization Act for Fiscal Year 1980."

Last year, a cooperative effort on the part of the Executive Branch and the Congress resulted in passage of the first specific annual appropriations authorization for our nation's vital intelligence activities. This was an important milestone in the development of responsible Congressional oversight. I am confident that consideration of the Fiscal Year 1980 intelligence authorization bill will further that process and foster continued cooperation on intelligence matters in the 96th Congress.

Titles I, II and III of the draft bill are essentially the same as those in the Fiscal Year 1979 Act; they authorize appropriations for the conduct of the intelligence and intelligence-related activities of Intelligence Community entities, for the Intelligence Community Staff, and for the CIA Retirement and Disability System. The Drug Enforcement Administration has not been included in Section 101(a) because it has not yet been determined which, if any, of DEA's intelligence activities should be included in the National Foreign Intelligence Program. Section 101(b) notes that the amounts authorized to be appropriated under the Act are those listed in the classified Schedule of Authorizations which accompanies the joint explanatory statement of the Conference Committee. I believe that this formulation is preferable to the language of the FY 1979 Act because it makes clear that the figures have the force and effect of an authorization in law.

Title IV of the draft authorization bill amends the Central Intelligence Agency Act of 1949 to revise the statutory basis under which CIA personnel are authorized

to carry firearms. The Amendment would authorize Agency personnel to carry firearms without geographic limitation, and I will, of course, continue to consult with the Secretary of State with regard to the carrying of firearms overseas. The Amendment provides that within the United States firearms may be carried only for certain specified purposes. This proposal was submitted for Congressional consideration in my letter to you of 11 May 1978, but it was not enacted during the second session of the 95th Congress, and I remain deeply concerned about the ability of the Agency's existing statutory authority to support current needs. Although the matter is addressed in provisions of proposed Intelligence Charter legislation, I continue to believe that legislative clarification of the Agency's firearms authority is of sufficient importance and urgency to warrant separate prompt action.

Consistent with Administration policy, Title V of the draft authorization bill contains technical provisions related to salary and benefit increases, and to compliance with the Congressional Budget Act. Additional explanatory material on Titles IV and V is attached to the draft bill.

Early and favorable consideration of the draft "Intelligence and Intelligence-Related Activities Authorization Act for Fiscal Year 1980" would be greatly appreciated. The Office of Management and Budget has advised that there is no objection to presentation of this proposed legislation to the Congress, and that its enactment would be in accord with the program of the President.

Yours sincerely,

/s/ Stansfield Turner

STANSFIELD TURNER

STATINTL

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A Bill

To authorize appropriations for fiscal year 1980 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Staff, the Central Intelligence Agency Retirement and Disability System, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Intelligence and Intelligence-Related Activities Authorization Act for Fiscal Year 1980".

TITLE I - INTELLIGENCE ACTIVITIES

Sec. 101. (a) Funds are hereby authorized to be appropriated for fiscal year 1980 for the conduct of the intelligence and intelligence-related activities of the following departments, agencies, and other elements of the United States Government:

- (1) The Central Intelligence Agency and the Director of Central Intelligence.
- (2) The Department of Defense.
- (3) The Defense Intelligence Agency.
- (4) The National Security Agency.
- (5) The Department of the Army, the Department of the Navy, and the Department of the Air Force.
- (6) The Department of State.
- (7) The Department of the Treasury.
- (8) The Department of Energy.
- (9) The Federal Bureau of Investigation.

(b) The amounts authorized to be appropriated under this Act for the intelligence and intelligence-related activities of the agencies listed in subsection (a) are those listed in the classified Schedule of Authorizations prepared by the Committee of Conference to accompany the Conference Report on H.R. of the Ninety-sixth Congress. Copies of this schedule shall be made available to the Committees on Appropriations of the House of Representatives and the Senate and to the appropriate elements of the United States Government for which funds are authorized to be appropriated by this Act under subsection (a).

(c) Nothing contained in this Act shall be deemed to constitute authority for the conduct of any intelligence activity which is prohibited by the Constitution or laws of the United States.

TITLE II - INTELLIGENCE COMMUNITY STAFF

STAT Sec. 201. (a) There is authorized to be appropriated for the Intelligence Community Staff for fiscal year 1980 the sum of [] to provide the support necessary to permit the Director of Central Intelligence to fulfill his responsibility for national intelligence collection tasking and resource management.

(b) For fiscal year 1980 the Intelligence Community Staff is authorized an end strength ceiling of [] full-time employees. Such personnel may be permanent employees of the Intelligence Community Staff or employees on detail from other elements of the United States Government so long as they are properly counted within the ceiling and there is a mix of positions to allow appropriate representation from elements of the United States Government engaged in intelligence and intelligence-related activities. Any employee who is detailed to the Intelligence Community Staff from another element of the United States Government shall be detailed on a reimbursable basis, except that an employee may be detailed on a nonreimbursable basis for a period of less than one year for performance of temporary functions as required by the Director of Central Intelligence.

(c) Except as provided in subsection (b) and until otherwise provided by law, the activities of the Intelligence Community Staff shall be governed by the Director of Central Intelligence in accordance with the provisions of the National Security Act of 1947 (50 U.S.C. 401 et seq.) and the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a-403j).

TITLE III - CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

Sec. 301. There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund for the fiscal year 1980 the sum of []

TITLE IV - CIA FIREARMS AUTHORITY

Sec. 401. Subsection 5(d) of the Central Intelligence Agency Act of 1949, (50 U.S.C. 403f(d)) is amended by striking out subsection 5(d) in its entirety and inserting in lieu thereof the following:

"(d) Authorize, under such regulations as the Director shall prescribe, Agency personnel, while in the discharge of their official duties, to carry firearms; Provided, that within the United States, such official duties shall include only the protection of: (i) information concerning

intelligence sources or methods, or classified intelligence documents or material; (ii) facilities, property, or any medium of exchange owned or utilized by the Agency; (iii) the Director and the Deputy Director, and other Agency personnel as may be designated by the Director or Deputy Director, such designations to be made only upon determination of the Director or Deputy Director that a specific stated exigency warrants such protective action, which is to be terminated, unless sooner renewed in the same fashion, upon expiration of the exigency or as specified in the designation order or at the end of 120 days, whichever is sooner; and (iv) defectors and foreign persons visiting the United States under Agency auspices; and Provided further, that such duties shall include the transportation and utilization of firearms for authorized training;"

TITLE V - TECHNICAL PROVISIONS

Sec. 501. (a) Appropriations authorized by this Act for salary, pay, retirement and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases authorized by law.

(b) There are authorized to be appropriated for Fiscal Year 1981 such sums as may be necessary for intelligence and intelligence-related activities.

TITLE IV - CIA FIREARMS AUTHORITY

TITLE IV - CIA FIREARMS AUTHORITY

RATIONALE AND EXPLANATION

Title IV of the draft bill would amend subsection 5(d) of the Central Intelligence Agency Act of 1949 to further the Agency's foreign intelligence mission, and to assist in the implementation of the duty of the Director of Central Intelligence, under the National Security Act of 1947, to protect intelligence sources and methods from unauthorized disclosure.

Section 5(d) now provides that Agency "couriers and guards" are authorized to carry firearms "when engaged in transportation of confidential documents and materials." The amendment would authorize Agency personnel to carry firearms while in the discharge of their official duties without geographic limitations, but it provides that within the United States firearms may be carried only for certain specified purposes, that is: to protect (i) information concerning intelligence sources or methods or classified intelligence documents or material; (ii) facilities, property, or any medium of exchange owned or utilized by the Agency; (iii) the Director and the Deputy Director, and other Agency personnel as may be designated by the Director or Deputy Director when exigent circumstances dictate; and (iv) defectors and other foreign persons visiting the United States under Agency auspices. In addition, the bill would allow Agency personnel to transport and utilize firearms for authorized training.

The proposed amendment arises out of concern over the ability of the Agency's existing statutory authority to support current needs. Legislative clarification of the Agency's authority in this area is necessary to resolve issues relating to the scope of authority of Agency personnel who may be forced to use firearms, and thereby risk exposure to possible civil or criminal liability, or both. There are circumstances not clearly covered by present statutory authority in which Agency personnel need authority to carry and use firearms. These include, for example, the protection of documents

and materials which are not being transported, the protection of certain Agency facilities from physical penetration, the protection of certain Agency personnel, and of defectors or foreign persons visiting the United States under Agency auspices who may be targets of assassination or abduction attempts. The Director will, of course, continue to consult with the Secretary of State with regard to the carrying of firearms overseas.

There are a number of provisions that authorize designated personnel of other federal agencies to carry firearms for purposes associated with agency functions. 22 U.S.C. 2666, for example, allows the Secretary of State to authorize security officers to carry firearms for the protection of distinguished visitors to the United States, the Secretary himself, and other persons. 10 U.S.C. 1585 allows the Secretary of Defense to authorize civilian officers and employees of the Department of Defense to carry firearms while assigned to investigative or other duties the Secretary may prescribe. 42 U.S.C. 2456 authorizes the Administrator of the National Aeronautics and Space Administration to "direct such of the officers and employees of the Administration as he deems necessary in the public interest to carry firearms while in the conduct of their official duties." The circumstances under which the draft bill would permit Agency personnel to carry firearms are more narrowly defined than in some of these statutes.

TITLE IV - CIA FIREARMS AUTHORITY

CHANGES IN EXISTING LAW

Changes in existing law made by the draft bill are shown as follows: existing law in which no change is proposed is shown in roman; existing law proposed to be omitted is enclosed in brackets; and new matter is underscored.

CENTRAL INTELLIGENCE AGENCY ACT OF 1949, As Amended
(50 U.S.C.A. 403a-j)

* * * * *

GENERAL AUTHORITIES

SEC. 5. In the performance of its functions, the Central Intelligence Agency is authorized to--

* * * * *

(d) Authorize [couriers and guards designated by the Director to carry firearms when engaged in transportation of confidential documents and materials affecting the national defense and security:] under such regulations as the Director shall prescribe, Agency personnel, while in the discharge of their official duties, to carry firearms; Provided, that within the United States, such official duties shall include only the protection of:
(i) information concerning intelligence sources or methods or classified intelligence documents or material;
(ii) facilities, property, or any medium of exchange owned or utilized by the Agency; (iii) the Director and the Deputy Director, and other Agency personnel as may be designated by the Director or Deputy Director, such designations to be made only upon determination of the Director or Deputy Director that a specific stated exigency warrants such protective action, which is to be terminated, unless sooner renewed in the same fashion, upon expiration of the exigency or as specified in the designation order or at the end of 120 days, whichever is sooner; and (iv) defectors and foreign persons visiting the United States under Agency auspices; and Provided further, that such duties shall include the transportation and utilization of firearms for authorized training;"

TITLE IV - CIA FIREARMS AUTHORITY

COST ANALYSIS

This legislation would not involve any measurable costs. No additional expenditures on firearms or on training are contemplated beyond existing levels.

TITLE V - TECHNICAL PROVISIONS

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RATIONALE AND EXPLANATION

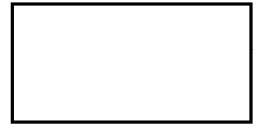
Section 501(a) of the draft bill has been added at the suggestion of the Office of Management and Budget, which has recommended inclusion of this provision in all authorization bills which cover salary and benefit payments.

Section 501(b) is designed to bring the intelligence authorization process into technical compliance with Section 607 of P.L. 93-344, which requires the authorization of appropriations in the calendar year prior to the year in which the fiscal year begins.

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Washington, D.C. 20505



9 MAR 1979

OLC 79-0204/d

Honorable Thomas P. O'Neill
Speaker of the House of
Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

This letter transmits for the consideration of the Congress a draft "Intelligence and Intelligence-Related Activities Authorization Act for Fiscal Year 1980."

Last year, a cooperative effort on the part of the Executive Branch and the Congress resulted in passage of the first specific annual appropriations authorization for our nation's vital intelligence activities. This was an important milestone in the development of responsible Congressional oversight. I am confident that consideration of the Fiscal Year 1980 intelligence authorization bill will further that process and foster continued cooperation on intelligence matters in the 96th Congress.

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/s/ Stansfield Turner

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